IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

SUMMONS FOR JUDGMENT NO.27 OF 2005
IN
SUM. SUIT NO.2811 OF 2004

Snehalata Anil Agarwal — Plaintiff
vs.
Raichand Samat & ors. — Defendants

Mr.R.D.Dave i/b. N.N.Vaishnava for the plaintiff.

Mr.P.A.Pravin for the defendants.

CORAM : S.U. KAMDAR,J.

DATED : 24th October 2005

P.C.

The present suit is filed on a Deed of Mortgage by relinquishing the security in the mortgage properties. On perusal of the documents particularly the pass-book of the defendants, it is clear that though the amount was received from the plaintiff, but the said amount has been returned back. When it was pointed out to the learned counsel for the plaintiff, the explanation given is that the said amount was given to the defendants as and by way of loan to repay the loan of her husband. Thus, in effect, it is admitted position that not a penny is paid in respect of the suit claim but money is re-routed through his account back to the plaintiff's account. In that view of the matter, I am of the opinion that it raises a triable issue. Hence, unconditional leave to the defendants to defend the suit is granted. Summons for Judgement is dismissed.

2. Suit transferred to the list of Commercial Causes. Written Statement or points of defence to be filed within four weeks from today. Affidavits, list of documents to be filed within four weeks thereafter. Inspection and discovery within four weeks thereafter. Suit to be on Board of the learned Judge taking Commercial Causes.

(S.U. KAMDAR,J.)